



GSA Office of the Chief Acquisition Officer

JUL 29 2008

MEMORANDUM FOR LINDA NEILSON

ACTING DEPUTY DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL (DARC)

FROM:

Al Matera
AL MATERA
DIRECTOR
ACQUISITION POLICY DIVISION

SUBJECT:

FAR Case 2005-040, Electronic Subcontracting Reporting System
(eSRS)

Attached are additional comments received on the subject FAR case published at 73 FR 21779; April 22, 2008. The comment closing date was June 23, 2008.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2005-040-18	06/23/08	06/13/08	DCMA
2005-040-19	05/49/08	04/29/08	Mead Johnson & Company Susan Blakeslee
2005-040-20	08/21/08	08/20/08	GSA/Janice Keys

Attachments

**DEFENSE CONTRACT MANAGEMENT AGENCY**

DCMA Small Business Division/Center
Bldg 1208E
Fort Monmouth, NJ 07703

2005-040-18

IN REPLY
REFER TO

DCMA-AQS

JUN 13 2008

MEMORANDUM FOR Director, Small Business Programs, Deputy Undersecretary of Defense for Acquisition, Logistics and Technology (ATTN: Ms. Wendy Despres, Assistant Director for Subcontracting)

SUBJECT: Electronic Subcontracting Reporting System (eSRS) FAR Interim Rule

1. References:

- a. Federal Register notice of FAR Case 2005-040, Electronic Subcontracting Reporting Systems (eSRS) dated 22 April 2008.
- b. Meeting of DoD Small Business Subcontracting Program Managers working group dated 22 April 2008.

2. Reference 1a published the FAR Interim Rule regarding implementation of the eSRS and requested submission of comments by 23 June 2008 to be considered in the formulation of a final rule. During reference 1b, the DoD Office of Small Business Programs (OSBP) Assistant Director for Subcontracting requested that all comments by DoD activities be submitted to her attention by 13 June 2008 for coordination, consolidation and submission to the GSA FAR Secretariat.

3. The DCMA Office of Small Business Programs has reviewed the interim rule and the following comments are submitted for consideration:

- a. FAR 19.704(a)(v) should clarify that the Government official responsible for acknowledging or rejecting reports (i.e. contracting officer for ISRs and Government agency awarding prime contracts or as prescribed in agency regulations for SSRs).
- b. FAR 19.704(a)(vi) should have complimentary DFARS coverage to make the distinction that the Government official for DoD Comprehensive Subcontracting Plan (Test Program) prime contractors is the designated DCMA Comprehensive Subcontracting Program Division Program Manager.
- c. Revise the first sentence of FAR 19.704(d)(2) to read "Submit a new commercial plan, 30 working days before the end of the Government's fiscal year, to the contracting officer responsible for the uncompleted Government contract with the latest completion date." Rationale for this revision is that aligning contractor commercial subcontracting plans with the Government's rather than the contractor's FY insures consistency across all concerns who

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SUBJECT: Electronic Subcontracting Reporting System (eSRS) FAR Interim Rule

request approval of commercial plans. This alignment also should facilitate commercial plan reporting in eSRS by aligning with the Government FY and with all other non-commercial subcontracting plan reporting by regulation rather than allowing commercial contractor's to report Government FY performance ad hoc.

d. Revise the second sentence of FAR 19.705-6(h) to specify what constitutes the basis for rejection of reports not adequately completed (i.e. errors, omissions, and incomplete data).

e. Revise the first sentence of FAR 52.219-9(l)(1) to read "This report is not required for commercial plans or for DoD contractors participating in their Comprehensive Subcontracting Plan (Test Program)" or "This report is not required for commercial plans or as prescribed by agency regulations." Rationale is that prime contractors in this DoD program are exempt from submission of Individual Subcontracting Reports (ISRs).

f. Modify FAR 52.219-9(l)(1)(i) to include punitive impacts associated with late submission of reports (i.e. past performance) given eSRS will accept late submittals of reports beyond the specified report due timelines.

g. Revise the second sentence of FAR 52.219-9(l)(1) to read "The report is required for each contract containing an individual subcontracting plan and shall be submitted to the Contracting Officer from the Government agency who awarded the prime contract or as prescribed by agency regulations." Rationale is that this revision is consistent with FAR 52.219-9(l)(1)(iii)(A) and FAR 52.219-9(l)(2)(i)(F) as specified in the interim rule since the authority to acknowledge receipt or reject ISRs resides with the Contracting Officer and SSRs resides with the Government agency awarding the prime contracts. The need to include "or as prescribed by agency regulations" is specified in the next comment in paragraph 3(d).

h. Revise FAR 52.219(l)(2)(i)(F) to read "The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding prime contracts or as prescribed in agency regulations." Rationale for this revision is that the DoD Comprehensive Subcontracting Plan (Test Program) covers all military service and DoD agency contracts. DCMA, given our responsibilities to perform management and oversight of plans included in this program as delegated by the Military Services and Defense Agencies should be prescribed by the DFARS as the authority to acknowledge or reject applicable SSRs. Further, recommend the DFARS prescribe that authority to acknowledge or reject all other SSRs submitted by prime contractors not in the Comprehensive Subcontracting Plan (Test Program) reside with the military service or DoD agency having the majority of the subcontracting dollars included in the SSR.

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4. Point of contact is the undersigned, comm. 732-532-8731, kevin.loesch@dcma.mil.


KEVIN LOESCH
Director
Small Business Division/Center

200-040-19

PUBLIC SUBMISSION

Docket: FAR-FAR-2008-0001

2008 Federal Acquisition Regulation (FAR) Rules

Comment On: FAR-FAR-2008-0001-0011

FAC 2005-25, FAR Case 2004-038, Federal Procurement Data System Reporting (Interim Rule)

Document: FAR-FAR-2008-0001-0055

Comment #5, Federal Procurement Data System Reporting

Submitter Information

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Organization: Mead Johnson & Company

General Comment

FAR case 2005-040

Year-end summary subcontract report (SSR) period

I would like to submit the SSR to cover my fiscal year January through December.

Rec'd
4-29-08
©

Review Comment

Docket Information

Docket ID FAR-FAR-2008-0001

Long Title 2008 Federal Acquisition Regulation (FAR) Rules

2005-040
20

Document Information

Document ID FAR-FAR-2008-0001-0006

Document Title FAR Case 2005-040, Electronic Subcontracting Reporting System (eSRS) (Interim Rule)

How to Comment Submit comments identified by FAC 2005-25, FAR case 2005- 040, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting FAR Case 2005-040 under the heading Comment or Submission. Select the link Send a Comment or Submission that corresponds with FAR Case 2005- 040. Follow the instructions provided to complete the Public Comment and Submission Form. Please include your name, company name (if any), and FAR Case 2005-040 on your attached document.
- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4035, ATTN: Diedra Wingate, Washington, DC 20405. Instructions: Please submit comments only and cite FAC 2005-25, FAR case 2005-040, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

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**Submitter's
Representative**

**Government Agency
Type**

Government Agency

Comments

See attachment.

Attachments

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Action

Note: If you wish to print your comment, please click the "Print" button.

2005-040-20

FAC 2005-25, FAR Case 2005-040: The Office of Small Business Utilization and Federal Acquisition Services submits the following comments highlighted in red-

Under SUPPLEMENTARY INFORMATION, A. Background, suggest being very specific.

2. Makes revisions to clarify that - - A contractor should have only one commercial plan in place at a time "during each fiscal year." Then add that "once that first plan has been accepted by a contracting officer of any Federal agency, subsequent contracts awarded to that contractor during the same fiscal year shall apply/use the previously approved commercial plan."

Revise the following sentence "A contract may have only one "Individual" subcontracting plan "in place to cover that specific contract period." Begin new sentence, "If the contract already has . . . a separate subcontracting plan should not be submitted "prior to each option period; however goals should be reviewed and updated if applicable" when options are exercised. (*Linda offers that this would not be advantageous for MAS schedule contracts which can potentially cover 20 years.*)

Recommend removing the entire next sentence: "Subcontracting plans are not required for subcontractors when the prime contract contains the clause at FAR 52.212-5 or the subcontractor provides a commercial item subject to the clause at FAR 52.244-6." *It appears that 52.212-5 entitled "Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Items" should be included in all prime contracts, therefore, the proposed sentence conflicts with the subk plan flow down requirements at FAR 19.704 (a)(9). The proposed sentence infers that flow downs are no longer required, even of large subcontractors who meet the threshold for having a subk plan.*

- Also Recommend including the title of each clause where ever referenced throughout the revised regulation.

The corresponding GSAM section might also include internal instructions to our CO's that a new set of goals prior to exercising the option period should be submitted to the SBTA and SBA/PCR who approved the original individual plan using the (former form 3584) or similar transmittal document for the files.

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Under 19.704 (a) (2) revise the first sentence to read "Submit a new commercial plan, 30 working days before the end of the contractors's fiscal year, or 30 calendar days prior to the expiration of the current subcontracting plan to the contracting officer . . .

Under 19.705-2 (e) states that a contract may have no more than one plan. This will not work for 20 year MAS schedule contracts. Recommend new individual plan prior to each 5 year option to allow for other multiple changes in addition to goals (including change in POC, items being subcontracted and to whom, etc).

Under 19.705-6 (h) it states that the contracting officer is responsible for action on ISR and SSR in eSRS. The current GSA, Office of Small Business Utilization (E), Agency Coordinator, has been delegated this function for SSR's in lieu of the contracting officer. E would still like each contracting officer that awards a commercial subcontracting plan review their applicable Summary Subcontract Report (SSR) year-end achievements for compliance. However, to be consistent in collecting subcontracting data at a central point, it is more feasible than having each central and regional office responsible in accepting/rejecting the data which is sent to Congress.

Under FAR 19.704(d)(4)

Based on the instructions on the paper SF-295, which is being discontinued, the FAR Council has adopted the interim requirement that all SSRs (including commercial plans) are due in October for the year ended September 30th.

It sounds very logical to agree with SBA's position, which is also less burdensome for the contractor. However, during the course of reviewing annual subcontracting plans for the upcoming contractor fiscal year, their prior SSR will not be DUE until 30 days after the contracting officer's determination that new proposed goals are acceptable, and "build on prior achievements." In this case, the last SSR available for comparison to new goals will be at least one year "old" and no current achievements (for the period just ended) available, which would reflect existing market and economic conditions at the time the subcontracting plan is being "accepted."

Might this reasoning tend to prefer reporting on the government fiscal year, as has been done in the past? The government FY reporting period will most likely overlap two years of data (if the contractor is on a different FY than the government) but will reflect more recent achievements?

E agrees with SBA that the SSR should be submitted on the contractor's fiscal year. However, we believe that if the contractor cannot submit on the Government's fiscal year, it should be submitted three months later (January-December) and not various contractor fiscal years, (i.e., June-July).

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